

REMARKS/ARGUMENTS

Claims 1-114 are pending.

The present claims are directed to a cosmetic article comprising a substrate having a cosmetic composition associated therewith, and at least one breakable capsule associated with the substrate so that a liquid in the capsule wets the cosmetic composition of the substrate when the capsule is broken (e.g., see Claim 1). Additional features of the article can include, for example, association with a container which has a means to break the capsule(s) (Claims 31 and 105), production of an exothermic reaction upon breaking the capsule(s) (Claims 52 and 105), the provision of a moisture impermeable ply included in the substrate (Claim 82), and pockets containing the breakable capsule (Claims 95 and 114).

The Office Action rejects Claims 1-40 and 52-114 under 35 U.S.C. § 103(a) in view of the combination of U.S. patent no. 6,508,604 (“Bechmann”) and WO 01/54661 (“Beck”). The Office Action also rejects Claims 52-114 under 35 U.S.C. § 103(a) over the combination of Bechmann, Beck, and U.S. patent no. 6,669,387 (Gruenbacher).

It is respectfully submitted that the rejections are untenable because the combined teachings of the cited references provide no description or suggestion to make the modifications suggested in the Office Action.

The Office Action recognizes that Bechmann provides no description for “an outer substrate with a cosmetic composition associated with it” (see page 4, 1st sentence of the Official Action of July 14, 2004). There is, in fact, a reason for this. Specifically, it is Bechmann’s intention and desire to provide all of the ingredients in individual cell’s “which are released from the individually sealed enclosures.” The purpose of Bechmann is to provide a solution for controlling the “flow and direction of the cell’s contents, once said at least one cell has been ruptured” (col. 2, line 15-17).

Beck describes “substantially dry” articles for personal cleansing containing cleansing and conditioning agents that are “water-activated”, i.e., wetted by immersion in water (page

56 of Beck). As described in the present specification such articles have a number of disadvantages, such as the ability to find a water source to “activate” the article (page 1, line 20 to page 2, line 2) and the article may not perform as desired if not properly wetted (page 2, lines 2-7), e.g., if too little or too much liquid is used for wetting.

As described in the specification on pages 2-3, the present invention can provide numerous advantages that the cited art does not provide any guidance to achieve. For example,

... because the water is associated with the substrate, the user need not have access to a water source, and the articles can be conveniently used anywhere.

In addition, because the water is encapsulated within the substrate, the amount of water is controlled, such that it better matches the amount of surfactant (or other cosmetic composition) associated with the substrate.

Moreover, by associating a predetermined amount of water with the substrate, the user does not inadvertently wash away the ingredients of the substrate, as could have been the case with prior dry wipes if held under the faucet for an excessive period of time.

Nowhere does Beck desire to control the amount of water to which the article is exposed. This is because Beck does NOT want to control the amount of water using cells, as in Bechmann. In fact, Beck describes that the dry articles which contain cleansers must be wetted by immersion in water or placed in a stream of water for “activation” (see page 56 of Beck). Bechmann and Beck are describing two different solutions to the same problem, i.e., delivery of active ingredients, and therefore would not simply have been combined based on their respective teachings. For further guidance on this point, Applicants point to MPEP § 2141.02: “Prior art must be considered in its entirety, including disclosures that teach away from the claims.”

The prior art does not suggest the modifications relied upon in the Office Action. The claimed invention is taught only by Applicants' own disclosure, not by the cited references. The two prior art references describe a capsule to encapsulate products (Bechmann) OR wetting a substrate with an external water source to wet the product associated with the substrate (Beck). Further, Beck, which was filed in January 2000, does not describe anything relating to the inclusion of breakable capsules notwithstanding the fact that breakable capsules were known many years earlier. For example, see col. 1, lines 22-55 of Bechmann, which states that breakable capsule systems were known in various patents; and Schneider (of record), which also described breakable capsules, issued in 1957.

The present invention is directed to an arrangement in which a cosmetic composition is associated with the substrate, and moreover, liquid-containing capsules are provided so that when the capsules are broken, the liquid within the capsules wets the cosmetic composition. Applicant has recognized such an arrangement as advantageous in a number of respects. First, the user need not have a water source available for wetting the cosmetic composition, and thus, the article can be used virtually anywhere. Second, by providing a wetting liquid for the cosmetic composition within one or more capsules, it is possible to provide a more desirable and more repeatable result, since the amount of the liquid contained within in the capsule or capsules can be better matched to the cosmetic composition and the amount of cosmetic composition associated with the substrate. Thus, the arrangement is less prone to excessive or insufficient wetting which could occur with known articles in which the article is immersed in water or held under a faucet to wet the composition associated with the substrate. It is respectfully submitted that the cited references fail to disclose or suggest the combined features of the present claims. Further, it is submitted that the cited references are not directed towards the purposes and objectives of the present invention, nor do the cited references recognize the advantageous results that can be achieved by the combined features

set forth in the present claims. Accordingly, it is submitted that the present claims define patentable subject matter in the sense of 35 U.S.C. §§ 102 and 103.

Beck is directed to “substantially dry” articles for personal cleansing containing cleansing and conditioning agents that are “water-activated,” i.e., wetted by immersion in water (page 56 of Beck). Bechmann describes a solution for controlling the flow rate of a cell’s contents when it is broken or ruptured (see col. 2, lines 13-25). Therefore, there is nothing in either publication which describes a container with a means to break the capsule (e.g., as in Claims 31 and 105). Further, there is no suggestion to include such a container from these cited publications, particularly, in view of the fact that Bechmann describes that the cell itself should be modified to facilitate breaking (see col. 6-7). Therefore, the rejection as it applies to these claims, and the claims that depend from Claims 31 and 105, should be withdrawn.

Turning to the rejection of Claims 52-114 where Gruenbacher is combined with Beck and Bechmann, Gruenbacher simply describes an applicator that contains an internal cavity that is composed of a “fluid-impervious barrier layer” for delivering a product, e.g., a cleaning product (col. 1, line 49 and col. 2, lines 21-33). Thus, Gruenbacher is concerned with delivering a pre-mixed composition upon breakage of the capsules and is similar to pre-moistened articles that deliver ready-to-use compositions right out of the package. Once again, the cited art simply would not have been combined. The references themselves do not suggest the combination proffered in the Office Action and, absent Applicant’s own disclosure, one skilled in the art would not have modified the references as suggested in the Office Action. Beck is concerned with keeping the active agents away from water and wetting with an external source. Bechmann puts all ingredients in the capsules. Gruenbacher is concerned with supplying a pre-mixed, ready-to-use composition. The cited references teach different solutions to similar problems and would not have been combined as suggested

in the Office Action. The references fail to suggest the combination of the present invention. Moreover, particularly since the references are directed towards different purposes and objectives as compared with the present invention, and since the references fail to disclose or suggest the advantages achieved by the present invention, it is respectfully submitted that the cited references fail to render obvious the subject matter of the present claims.

In view of the foregoing, Applicant requests that both rejections under 35 U.S.C. § 103(a) be withdrawn. In addition, Applicant requests that when the elected claims are found to be allowable, the corresponding non-elected process claims (Claims 41-51) should be rejoined (MPEP §821.04¹).

For the foregoing reasons, it is respectfully submitted that this application is now in condition for allowance. A Notice of Allowance for claims 1-114 is earnestly solicited.


Should the Examiner deem that any further action is necessary to place this

¹ "where the application as originally filed discloses the product and the process for making and/or using the product, and only claims directed to the product are presented for examination, when a product claim is found allowable, applicant may present claims directed to the process of making and/or using the patentable product."

application in even better form for allowance, he or she is encouraged to contact Applicant's undersigned representative at the below listed telephone number.

Respectfully submitted,

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